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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 JAMES EDWARD CURTIS,

10 Plaintiff,

11 v.

12 TERRY J. BENDA, et al.,

13 Defendants.

No. C08-5109 FDB/KLS

ORDER DENYING MOTION FOR THE
APPOINTMENT OF COUNSEL

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15 This civil rights action has been referred to United States Magistrate Judge Karen L.
16 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is
17 Plaintiff's motion for appointment of counsel. Dkt. 54. Having carefully reviewed Plaintiff's
18 motion, Defendants' response (Dkt. 58), and balance of the record, the Court finds, for the
19 reasons stated below, that Plaintiff's motion should be denied.

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21 **I. DISCUSSION**

22 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.
23 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party
24 proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn*
25 *v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236
26 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional

1 circumstances requires an evaluation of both the likelihood of success on the merits and the
2 ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues
3 involved. *Wilborn*, 789 F.2d at 1331. Neither of these factors is dispositive and both must be
4 viewed together before reaching a decision on request of counsel under Section 1915(d). *Id.*

5 Here there is no doubt that Plaintiff has demonstrated an adequate ability to articulate his
6 claims *pro se*. He has filed numerous motions and discovery, has successfully defended a
7 motion to dismiss based on his legal argument, and has written numerous lengthy motions,
8 including the present 32 page motion, supported with case law and argument. According to
9 Plaintiff, he has also submitted 200 requests for production and 25 interrogatories. Dkt. 54, p.
10 14. Plaintiffs lack of legal training and resources are not exceptional circumstances that warrant
11 the appointment of counsel. Rather, they are the type of difficulties encountered by many *pro se*
12 litigants.
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14 Plaintiff argues that exceptional circumstances exist because Defendants have resisted his
15 discovery efforts by objecting on safety and security grounds to a number of his interrogatories
16 and requests for production. Plaintiff also argues that extraordinary circumstances have been
17 created by the confiscation by the Department of Corrections of legal materials he claims will
18 enable him to prove his case. Dkt. 54, p. 17; Dkt. 54-2, pp. 1-16 (exhibits reflecting IMU staff
19 confiscated legal materials held by Plaintiff containing legal face sheets and other documents
20 relating to the crimes and prison discipline actions of other inmates).
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23 In determining whether exceptional circumstances exist in a particular case, the Court
24 must evaluate both the likelihood of success on the merits, and the ability of the plaintiff to
25 articulate his claims *pro se* in light of the complexity of the legal issues involved. As was true
26 with the litigant in *Wilborn*, the difficulties faced by Mr. Curtis in attempting to litigate his case

1 do not derive from the complexity of the issue involved here nor does the need for discovery
2 necessarily qualify the issues involved as“complex.” See *Wilborn*, 789 F.2d at 1331:

3 Although discovery was essential in order for Wilborn to learn who had
4 impounded his vehicle and why, particularly since Cook allegedly misinformed
5 him, the need for such discovery does not necessarily qualify the issues involved
6 as“complex.” Most actions require development of further facts during litigation
7 and a *pro se* litigant will seldom be in a position to investigate easily the facts
8 necessary to support the case. If all that was required to establish successfully the
9 complexity of the relevant issues was a demonstration of the need for
10 development of further facts, practically all cases would involve complex legal
11 issues.

12 *Id.*, 789 F.2d at 1331 (internal footnotes omitted).

13 In addition, this Court will not address discovery disputes that are not the subject of a
14 properly filed motion to compel, which must include a certification that the movant has in good
15 faith conferred or attempted to confer with the person or party failing to make the discovery in an
16 effort to secure the information or material without court intervention.” Fed. R. Civ. P.
17 37(a)(2)(B).

18 Mr. Curtis has had no difficulty in articulating and litigating his claims *pro se*. However,
19 he has failed to demonstrate a likelihood of the success on the merits or demonstrated that the
20 complexity of the issues involved is sufficient to require designation of counsel.

21 Accordingly, Plaintiff’s motion to appoint counsel (Dkt. 54) is **DENIED**. The Clerk is
22 directed to send copies of this Order to Plaintiff.

23 DATED at Tacoma, Washington this 1st day of September, 2009.

24 
25 Karen L. Strombom
26 United States Magistrate Judge